PRESENCE OF STENOGRAPHER IN GRAND JURY ROOM. — The defendants were indicted for conspiracy to conceal assets in bankruptcy. Among the witnesses heard by the grand jury was a detective employed by the Department of Justice much of whose testimony was hearsay. A stenographer, duly appointed and sworn, was present in the grand jury room. *Held* that either circumstance is ground for quashing the indictment. *United States* v. *Rubin*, 52 N. Y. L. J. 473 (U. S. Dist. Ct., Conn.).

This case adds new confusion to an already irreconcilable clash of opinion in the federal courts. One federal court has announced that under no circumstances will evidence before the grand jury be subject to judicial control. See *In re Kittle*, 180 Fed. 946, 947 (S. D., N. Y.). According to another view, the court will not ordinarily review the evidence before the grand jury, but may quash the indictment in extreme cases, as where it appears on the face of the indictment that the only witness heard was incompetent. See *United States* v. *Terry*, 39 Fed. 355, 356 (N. D., Cal.). A more prevalent view is that the court may inquire into the evidence, but will quash the indictment only if there was no legal evidence, or if the evidence mainly relied on was incompetent. *United States* v. *Farrington*, 5 Fed. 343 (N. D., N. Y.); *United States* v. *Kilpatrick*, 16 Fed. 765 (N. C.); *United States* v. *Jones*, 69 Fed. 973 (Nev.). See *McGregor* v. *United States*, 134 Fed. 187, 192 (C. C. A. 4th Circ.). The principal case goes still further, for it was not even shown that the testimony harmed the defendant. This conflict, however, seems likely to remain unsettled, for in the federal courts a refusal to quash an indictment will seldom be reviewed on appeal. *McGregor* v. *United States*, *supra; Holt* v. *United States*, 218 U. S. 245. As to the stenographer, the case is opposed to previous federal *dicta* and decisions, and overrides a long established practice in the federal courts. *United States* v. *Simmons*, 46 Fed. 65. See *United States* v. *Heinze*, 177 Fed. 770, 772. The court's view that the Act of 1906, c. 3935 (34 STAT. AT L. 816) excludes stenographers from the grand jury room seems untenable. Its purpose was to permit special appointees of the Attorney-General to conduct grand jury proceedings, not to exclude persons previously admitted. See *United States* v. *Heinze*, *supra*, 773. On both grounds of decision the principal case seems to take an unnecessarily narrow view, and as to the stenographer, at least, another federal court has since reached a different conclusion. *United States* v. *Rockefeller*, (U. S. Dist. Ct. S. D., N. Y., not yet officially reported).

INJUNCTIONS — ACTS RESTRAINED — ELECTION OF DELEGATES TO ALLEGED UNAUTHORIZED CONSTITUTIONAL CONVENTION. — A special election had been held in New York to submit to the voters the question of calling a state constitutional convention. The result was certified to be in favor of holding the convention. The plaintiff, a taxpayer, seeks to enjoin the state election officials from proceeding with the election of delegates to this convention on the ground that the ballots were not properly counted at the election and that the statute in compliance with which it was held is unconstitutional. *Held*, that the injunction will not be granted. *Schieffelin* v. *Komfort*, 212 N. Y. 520.

For a discussion of this case, see this issue of the REVIEW, p. 309.

INSURANCE — RE-INSURANCE — MEASURE OF LIABILITY OF RE-INSURER WHEN INSURER BANKRUPT. — A guarantee society guaranteed the debentures of a trading company and re-insured part of the risk. The trading company failed, and the guarantee society was unable to meet the claims of the trading company's debenture holders. *Held*, that the re-insurer is liable for the full amount of the claims re-insured, rather than for the ratable sum which the insolvent guarantee society is able to pay.

In re Law Guarantee Trust and Accident Society, Ltd., [1914] W. N. 291 (Eng. C. A.).

For a discussion of the principles underlying the liability of a re-insurer in this and similar cases, see NOTES, p. 302.

INTERSTATE COMMERCE — CONTROL BY STATES — RAILROAD REGULATION — REGULATIONS BY STATE COMMISSION AS TO DEMURRAGE. — The Michigan Railroad Commission passed certain demurrage rules applicable to all traffic originating or terminating within the state. In respect to the time allowance for loading and unloading, these rules differed materially from those tentatively indorsed by the Interstate Commerce Commission. The plaintiff asks for an injunction restraining the enforcement of the state commission's rules. *Held*, that the injunction will be granted as to interstate shipments, and denied as to intrastate shipments. *Michigan Central R. Co.* v. *Michigan Railroad Commission*, 148 N. W. 800 (Mich.).

The court distinguishes the Shreveport Rate Cases on the ground that there the Interstate Commerce Commission had made a finding that the regulation as to intrastate commerce was an unreasonable interference with commerce between the states. This distinction seems valid. The federal power to regulate intrastate commerce arises solely as an incident to the power to control interstate commerce. Until the protection of the latter necessitates federal interference, the control of the states over the former should be absolute. See *The Shreveport Rate Cases*, 234 U. S. 342; for discussion, see 28 HARV. L. REV. 34, 113. For a criticism of a decision contrary to the principal case, see 27 HARV. L. REV. 388.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — BREACH OF CONDITION: WAIVER OF BREACH BY APPLICATION TO COMPEL LESSEE'S RECEIVER TO ELECT TO ADOPT OR RENOUNCE THE LEASE. — The defendants were appointed receivers of an insolvent lessee, and the plaintiff, the lessor, applied to the court to fix a time within which the receivers should either "adopt or renounce the lease." The receivers thereupon assumed the lease, and the plaintiff now asks for authority to dispossess them, under his right to reënter for default in rent, unless they pay back rent which accrued before the receivership. *Held*, that the petition be denied, on the ground that the plaintiff has waived the breach. *Durand & Co.* v. *Howard & Co.*, 216 Fed. 585 (C. C. A., 2d Circ.).

A receiver in insolvency, like a trustee in bankruptcy, may adopt a lease owned by the debtor, at his election. See *Carswell* v. *Farmers' Loan & Trust Co.*, 74 Fed. 88, 91. But he has no power of eminent domain, and must take subject to the landlord's right to declare a forfeiture for defaults by the tenant. *Farmers' Loan & Trust Co.* v. *Northern Pacific R. Co.*, 58 Fed. 257, 265. In the principal case, therefore, in the absence of a waiver of the breach of condition by the landlord, the receiver was not entitled even in equity to keep possession without payment of all back rent. See *Fleming* v. *Fleming Hotel Co.*, 69 N. J. Eq. 715, 61 Atl. 157. The majority of the court, however, felt that the landlord's application to the court to compel the receivers to make their election constituted such a waiver. It is true that in order to avoid forfeiture the courts will spell out a waiver from any act by the landlord recognizing the continued existence of the tenancy. *Hasterlik* v. *Olson*, 218 Ill. 411, 75 N. E. 1002; *Brooks* v. *Rodgers*, 99 Ala. 433, 12 So. 61. Thus the acceptance of rent accruing after breach, or the institution of legal proceedings based on the relation of landlord and tenant, will conclude the landlord. *Conger* v. *Duryee*, 90 N. Y. 594; *Jackson* v. *Allen*, 3 Cow. (N. Y.) 220; *Moore* v. *Ullcoats Mining Co.*, [1908], 1 Ch. 575. Mention of the lease as existing in subsequent negotiations, or in a receipt for prior rent have also been held to